

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

GENE ALLEN,

Petitioner,

vs.

STATE OF NEVADA, et al.,

Respondents.

Case No. 3:11-CV-00742-ECR-(VPC)

ORDER

Petitioner has submitted an application to proceed in forma pauperis (#8). The court finds that petitioner is unable to pay the filing fee. The court has reviewed the petition, and the court will refer this action to the United States Court of Appeals for the Ninth Circuit because the petition is successive.

Petitioner alleges that he was convicted in the Eighth Judicial District Court of sexual assault upon a minor under the age of sixteen (16) years and lewdness with a child under the age of fourteen (14) years, Case No. C177427. He challenged the validity of the same conviction in Allen v. Nevada, Case No. 3:03-CV-00672-LRH-(RAM). The Court summarily dismissed that petition pursuant to Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts because, among other reasons, petitioner presented only errors of state law which are not cognizable in federal habeas corpus. Petitioner did not appeal the dismissal of that petition. Petitioner must first obtain authorization from the court of appeals before this court can consider his petition. 28 U.S.C. § 2244(b)(3).

1 Petitioner has submitted two motions for an evidentiary hearing (#4, #6) and a motion for the
2 recusal of the assigned magistrate judge (#5). These motions are moot because the court is
3 transferring and closing the action.

4 IT IS THEREFORE ORDERED that the application to proceed in forma pauperis (#8) is
5 **GRANTED**. Petitioner need not pay the filing fee of five dollars (\$5.00).

6 IT IS FURTHER ORDERED that the clerk of the court shall file the petition for a writ of
7 habeas corpus pursuant to 28 U.S.C. § 2254.

8 IT IS FURTHER ORDERED that the motions for an evidentiary hearing (#4, #6) and the
9 motion for recusal (#5) are **DENIED** as moot.

10 IT IS FURTHER ORDERED that the clerk shall add Catherine Cortez Masto, Attorney
11 General for the State of Nevada, as counsel for respondents.

12 IT IS FURTHER ORDERED that the clerk shall electronically serve respondents with a
13 copy of the petition and a copy of this order. No response by respondents is necessary.

14 IT IS FURTHER ORDERED that, pursuant to Circuit Rule 22-3(a), the clerk of the court
15 shall refer this action to the United States Court of Appeals for the Ninth Circuit.

16 IT IS FURTHER ORDERED that the clerk of the court shall administratively close this
17 action.

18 DATED: January 26, 2012.

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21 EDWARD C. REED
22 United States District Judge
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